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9 Attorneys for Plaintiff  
10 CENTER FOR ADVANCED PUBLIC AWARENESS  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC  
AWARENESS,

Plaintiff,

v.

JOKARI/US, INC.; *et al*,

Defendants.

Case No.: CGC-19-574722

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

[PROPOSED] CONSENT JUDGMENT

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2  
3 **1. INTRODUCTION**

4 This Consent Judgment is entered into by and between plaintiff Center for Advanced  
5 Public Awareness (“CAPA”) and Jokari/US, Inc. (“Jokari”), with CAPA and Jokari each  
6 individually referred to as a “Party” and collectively, as the “Parties”, to resolve the allegations  
7 in the August 29, 2018 60-Day Notice of Violation (“Notice”) without the need for costly and  
8 protracted litigation, in compliance with the Safe Drinking Water and Toxic Enforcement Act of  
9 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

10 **1.1 Plaintiff**

11 CAPA is a California-based non-profit organization who seeks to protect the environment  
12 though the elimination or reduction of toxic chemicals utilized in the manufacture of consumer  
13 products and to increase public awareness of those chemicals by promoting environmentally  
14 sound practices and corporate responsibility.

15 **1.2 Defendant**

16 Jokari employs ten or more persons and is a person in the course of doing business for  
17 purposes of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

18 **1.3 General Allegations**

19 CAPA alleges that Jokari manufactures, imports, distributes, sells or offers for sale in  
20 California organizers with vinyl/PVC components that contain di(2-ethylhexyl)phthalate  
21 (“DEHP”) and diisononyl phthalate (“DINP”), and that it does so without providing the health  
22 hazard warning CAPA alleges is required by Proposition 65.

23 **1.4 Listed Chemicals**

24 On October 24, 2003, the State of California added DEHP to the list of chemicals known  
25 to cause birth defects, reproductive toxicity and cancer. On December 20, 2013, The State of  
26 California listed DINP as a chemical known to cause cancer.  
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1                   **1.5     Product Description**

2           The products covered by this Consent Judgment are organizers with vinyl/PVC  
3 components, containing DEHP and DINP, that are manufactured, imported, distributed, sold or  
4 offered for sale in California by Jokari, including, but not limited to, the *Jokari/US Gift Bag*  
5 *Organizer, Model #06427, UPC #0 32368 06427 1* (hereinafter, “Products”).  
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7                   **1.6     Notice of Violation**

8           On August 29, 2018, CAPA served Jokari, the California Attorney General and the  
9 requisite public enforcement agencies with a 60-Day Notice of Violation (the Notice), alleging  
10 that Jokari violated Proposition 65 when it failed to warn its customers and consumers in  
11 California that its Products can expose users to DEHP and DINP. To the best of the Parties’  
12 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce  
13 the allegations set forth in the Notice.

14                  **1.7     Complaint**

15           On March 21, 2019, CAPA commenced the instant action (Complaint), naming Jokari as  
16 one of the defendants for the alleged violations of Proposition 65 that are the subject of the  
17 Notice.

18                  **1.8     No Admission**

19           Jokari denies the material, factual, and legal allegations contained in the Notice and  
20 Complaint, and maintains that all of the products that it has sold or distributed for sale in  
21 California, including the Products, have been, and are, in compliance with all laws. Nothing in  
22 this Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment  
23 constitute or be construed as, an admission by Jokari of any fact, finding, conclusion of law,  
24 issue of law, or violation of law. This section shall not, however, diminish or otherwise affect  
25 Jokari’s obligations, responsibilities, and duties under this Consent Judgment.  
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1                   **1.9     Jurisdiction**

2                   For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Jokari as to the allegations contained in the Complaint, that venue is proper in  
4 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the  
5 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure  
6 § 664.6.  
7

8                   **1.10    Effective Date**

9                   For purposes of this Consent Judgment, the term “Effective Date” shall mean the date  
10 this Consent Judgment is approved by the Court, including an unopposed tentative ruling.

11 **2.     INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

12                  **2.1     Commitment to Reformulate or Provide Warnings**

13                  Commencing on the Effective Date and continuing thereafter, Jokari shall only  
14 manufacture, import, sell or distribute for sale, in or into the State of California, Products that are  
15 either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products that are  
16 labeled with a clear and reasonable warning, as set forth under Sections 2.3 and 2.4.

17                  **2.2     Reformulation Standard Defined**

18                  For purposes of this Consent Judgment, “Reformulated Products” are defined as Products  
19 containing DEHP and/or DINP in a maximum concentration of less than 0.1 percent (1,000 parts  
20 per million) in each accessible component (i.e. any component that may be touched during a  
21 reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California,  
22 a federal agency, or a nationally recognized accrediting organization. For purposes of  
23 compliance with this reformulation standard, testing samples shall be prepared and extracted  
24 using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and  
25 analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other  
26 methodologies utilized by federal or state government agencies to determine phthalate content in  
27 a solid substance.  
28

### 2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date and continuing thereafter, Jokari shall provide clear and reasonable warnings, as set forth in this Section and in accordance with Title 27, California Code of Regulations § 25600 *et seq.*, for all Products manufactured, imported, sold, or otherwise distributed or provided for sale to customers in California that are not Reformulated Products. Each Product warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use. Each Product warning shall be provided in a manner such that it is clearly associated with the *specific* Product to which the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Consent Judgment, a clear and reasonable warning displayed or transmitted according to the criteria detailed in Cal. Code Regs. § 25602 *et seq.* and detailed below shall satisfy these requirements.



**WARNING:** This product can expose you to DEHP and DINP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Or, if placed directly on the Product or its labeling, Jokari may, at its option, utilize the following short-form warning statement, provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product's label, and in no case smaller than six-point type, as follows:



**WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

For purposes of this Consent Judgment, "Product Label" is defined as display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and in no event

1 smaller than the largest type size used for other consumer information on the product. If Title  
2 27, California Code of Regulations §§ 25600 et seq. is modified or amended to permit or require  
3 warnings that differ from the warnings described in this Section and Section 2.4 of this Consent  
4 Judgment, then Jokari may utilize the modified or amended warning provisions and shall be  
5 deemed to be in compliance with this Consent Judgment.  
6

#### 7 **2.4 Internet and Mail Order Catalog Warnings**

8 Jokari agrees that, if, after the Effective Date, it sells Products that do not meet the  
9 definition of Reformulated Products via the internet or by mail order catalogue, Jokari shall  
10 provide a warning for each Product, pursuant to Section 2.3, supra, and subject to the following  
11 requirements.

12 For all Products sold to consumers in California via a catalogue printed after the Effective  
13 Date that do not qualify as Reformulated Products, Jokari agrees to provide a warning both on  
14 the Product label and in the written text of the catalog, in a manner that clearly associates the  
15 warning with the specific Product being purchased, such that the consumer does not have to  
16 search for it in the general content of the catalogue. The warning shall be in the same type size  
17 or larger than other consumer information provided for the Product within the catalog and on the  
18 same page and in the same location as the display and/or description of the Product.

19 For all Products sold via the internet to consumers or customers located in California  
20 that do not qualify as Reformulated Products, the warning requirements of this Section shall be  
21 satisfied if, prior to purchase, as described in Section 2.3: (a) a warning appears on the same web  
22 page, in the same type size or larger than the Product description text, as the Product; (b) a  
23 warning appears on the same web page as the price for the Product, in the same type size or  
24 larger than the Product description text; (c) a warning appears on one or more web pages  
25 displayed to the consumer prior to purchase, in the same type size or larger than the Product  
26 description text; or (d) a hyperlink, clearly marked “**WARNING**” appears on the same web page  
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1 and in the same location as the display and/or description of the Product, in type large enough so  
2 that the consumer does not have to search for it, and a prominently placed warning appears  
3 elsewhere, such as on the Product description page, in a manner that clearly associates it with the  
4 Product to which the warning applies, prior to checkout or purchase.

5 If Jokari utilizes the short-form label content, pursuant to Cal Code Regs. §25602(a)(4)  
6 and detailed above, the warning provided on the website or in the catalogue may use the same  
7 content.  
8

### 9 **3. MONETARY SETTLEMENT TERMS**

#### 10 **3.1 Civil Penalty Payments**

11 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred  
12 to in the Notice, Complaint, and this Consent Judgment, Jokari agrees to pay \$3,000 in civil  
13 penalties. Jokari's civil penalty payment will be allocated according to Health and Safety Code  
14 §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California  
15 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five  
16 percent (25%) of the penalty payment retained by CAPA. On or before the Effective Date,  
17 defined at Section 1.10, supra, Jokari shall issue its payment in two checks made payable to (a)  
18 "OEHHA" in the amount of \$2,250; and (b) "Gates Johnson Law, in Trust for CAPA" in the  
19 amount of \$750. CAPA's counsel shall be responsible for delivering OEHHA's portion of the  
20 penalty payment.

#### 21 **3.2 Reimbursement of Attorneys' Fees and Costs**

22 The parties acknowledge that CAPA and its counsel offered to resolve this dispute  
23 without reaching terms on their fees and costs. Shortly after the Parties finalized the other  
24 material settlement terms, they negotiated and reached an accord on the compensation to be paid  
25 to CAPA and its counsel, under general contract principles and the private attorney general  
26 doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed  
27 through the mutual execution of this Consent Judgment and court approval of the same, but  
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1 exclusive of fees and costs on appeal, if any. Jokari agrees to pay a total of \$26,500 for all  
2 reasonable attorneys' fees and costs incurred in investigating, bringing this matter to Jokari's  
3 attention, litigating, and negotiating a settlement in the public interest, and seeking Court  
4 approval of same.

5 **3.3 Attorneys' Fees & Costs: Installment Payments; Timing & Instructions**

6 The Parties agree that, in fulfillment of their commitment in Section 3.2 above, Jokari  
7 shall make four (4) equal attorneys' fees installment payments of \$6,625 each, for a total of  
8 \$26,500 in attorneys' fees and costs. Jokari shall deliver its civil penalty payments concurrently  
9 with the first of its four attorneys' fee reimbursement installment payments to its counsel, 5D  
10 Business Solutions, within fifteen (15) days of the date this Consent Judgment is scheduled to be  
11 heard by noticed motion by the San Francisco Superior Court, as contemplated by Section 5,  
12 below. Upon submission of the moving papers in support of the order and entry of judgment of  
13 this Consent Judgment, CAPA's counsel shall inform Jokari's counsel of the motion to approve  
14 hearing date and time, and Jokari's counsel shall provide CAPA's counsel with written  
15 confirmation following its receipt of the settlement funds. Within five (5) days of the Effective  
16 Date, Jokari's counsel shall disburse the penalty payments and the first attorneys' fee installment  
17 payment funds to CAPA's counsel to the payment address listed in Section 3.4, below. The  
18 remaining three installment payments of \$6,625 each shall be spaced thirty (30) days apart and  
19 shall commence within 30 days of the initial installment payment and continue thereafter in 30-  
20 day increments, until paid in full. Jokari shall make its checks payable to "Gates Johnson Law"  
21 and shall deliver them to the address in Section 3.4, below.  
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1 For purposes of this Consent Judgment, any fee installment payment received after the  
2 due date shall be considered “late” and shall be subject to legal action. For any payment  
3 received after its due date, Jokari understands and agrees that CAPA has the right to pursue any  
4 and all available payment recovery options in a California court of competent jurisdiction,  
5 including seeking a judgment to enforce the terms herein.  
6

### 7 **3.4 Payment Address**

8 All payments required by this Consent Judgment shall be delivered to the following  
9 address:  
10

11 Gates Johnson Law  
12 Attn: Kimberly Gates Johnson  
2822 Moraga Street  
San Francisco, CA 94122

## 13 **4. CLAIMS COVERED AND RELEASED**

### 14 **4.1 CAPA’s Release of Proposition 65 Claims**

15 CAPA, acting on his own behalf and in the public interest, and on behalf of its past and  
16 current agents, representatives, attorneys, successors an assignees (“Releasers”) releases Jokari  
17 and its parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
18 employees, and attorneys (“Releasees”) and each entity to whom Jokari directly or indirectly  
19 distributes or sells the Products including, but not limited to, its downstream distributors,  
20 wholesalers, customers, retailers (including, without limitation, Wayfair), franchisers,  
21 cooperative members, licensors and licensees (Downstream Releasees) for any violations arising  
22 under Proposition 65 for unwarned exposures to DEHP and DINP from the Products  
23 manufactured, imported, distributed, sold or offered for sale by Jokari prior to the Effective Date,  
24 as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes  
25 compliance with Proposition 65 by Jokari with respect to the alleged or actual failure to warn  
26 about exposures to DEHP and/or DINP from Products manufactured, sold or distributed for sale  
27 by Jokari after the Effective Date.  
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1                   **4.2      CAPA's Individual Release of Claims**

2           CAPA, in its individual capacity only and *not* in his representative capacity, also provides  
3 a release to Jokari, Releasees, and Downstream Releasees which shall be effective as a full and  
4 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
5 attorneys' fees, damages, losses, claims, liabilities and demands of CAPA of any nature,  
6 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged  
7 or actual exposures to DEHP and/or DINP in Products manufactured, imported, distributed, sold  
8 or offered for sale by Jokari prior to the Effective Date. Nothing in this Section shall affect  
9 CAPA's right to commence or prosecute an action under Proposition 65 against a Releasee or  
10 Downstream Releasee that does not involve Jokari's Products, nor to enforce this payment terms  
11 of this Consent Judgment.  
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13                   **4.3      Jokari's Release of CAPA**

14           Jokari, on its own behalf and on behalf of its past and current agents, representatives,  
15 attorneys, successors and/or assignees, hereby waives any and all claims against CAPA, its  
16 attorneys and other representatives, and Releasors, for any and all actions taken or statements  
17 made (or those that could have been taken or made) by CAPA and his attorneys and other  
18 representatives in the course of investigating the claims alleged in the Notice, seeking to enforce  
19 Proposition 65 against it in this matter, or with respect to the Products.

20                   **5.      COURT APPROVAL**

21           This Consent Judgment shall be null and void if, for any reason, it is not approved and  
22 entered by the Court within one year after it has been fully executed by all Parties. CAPA and  
23 Jokari agree to support the entry of this agreement as a judgment, and to obtain the Court's  
24 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to  
25 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial  
26 approval of this Consent Judgment, which motion CAPA shall draft and file. In furtherance of  
27 obtaining such approval, the Parties agree to mutually employ their best efforts, and those of  
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1 their counsel, to support the entry of this agreement as a judgment, and to obtain judicial  
2 approval of their settlement in a timely manner. For purposes of this section, “best efforts” shall  
3 include, at a minimum, supporting the motion for approval, responding to any objection that any  
4 third-party may file or lodge, and appearing at the hearing before the Court if so requested.

5  
6 **6. SEVERABILITY**

7 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,  
8 any provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of  
9 the remaining provisions shall not be adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of  
12 California and apply within the State of California. In the event that Proposition 65 is repealed,  
13 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the  
14 Products, then Jokari may provide CAPA with written notice of any asserted change in the law,  
15 and shall have no further injunctive obligations pursuant to this Consent Judgment, with respect  
16 to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be  
17 interpreted to relieve Jokari from its obligation to comply with any pertinent state or federal law  
18 or regulation.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment  
21 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
22 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
23 following addresses:

24 For Jokari:

25 Don Saller, President  
26 Jokari/US, Inc.  
27 1220 Champion Circle, Suite 100  
28 Carrollton, TX 75006

1                   With a Copy to:

2                   George H. Crompton, Esq.  
3                   General Counsel Jokari/US, Inc.  
4                   5D Business Solutions  
5                   585 Alpha Park Drive, Suite 102  
6                   Pittsburgh, PA 15238

7                   For CAPA:

8                   Kimberly Gates Johnson, Esq.  
9                   Gates Johnson Law  
10                  2822 Moraga Street  
11                  San Francisco, CA 94122

12               Any Party may, from time to time, specify in writing to the other Party a change of address to  
13               which all notices and other communications shall be sent.

14               **9.       COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

15               This Consent Judgment may be executed in counterparts and by facsimile or portable  
16               document format (pdf) signature, each of which shall be deemed an original and, all of which,  
17               when taken together, shall constitute one and the same document.

18               **10.      COMPLIANCE WITH REPORTING REQUIREMENTS**

19               CAPA and its counsel agree to comply with the reporting form requirements referenced  
20               in California Health and Safety Code § 25249.7(f).

21               **11.      ENTIRE AGREEMENT**

22               This Consent Judgment contains the sole and entire agreement and understanding of the  
23               Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
24               negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
25               and therein. There are no warranties, representations, or other agreements between the Parties  
26               except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
27               other than those specifically referred to in this Consent Judgment have been made by any Party  
28               hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
                 shall be deemed to exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties  
3 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful  
4 motion of any party and the entry of a modified Consent Judgment by the Court thereon.  
5

6 **13. AUTHORIZATION**


7 The undersigned are authorized to execute this Consent Judgment on behalf of their  
8 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
9 Consent Judgment.


10 **AGREED TO:**

**AGREED TO:**

11  
12 Date: 8/9/19

Date: 8/11/19

13 By:   
14 Linda DeRose Droubay, Executive Director  
15 CENTER FOR ADVANCED PUBLIC  
16 AWARENESS

13 By:   
14 Don Saller, President  
15 JOKARI/U.S., INC.

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[PROPOSED] CONSENT JUDGMENT